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Supreme Court, U.S.
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No. 94-137

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

PERRY F. SEAL, JR.,

PETITIONER,

vs.

KATHLEEN F. SEAL,

RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF FOR THE RESPONDENT
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QUESTION PRESENTED

Do Petitioner's claims that in a marital dissolution proceeding, the California Superior Court, the California Appellate Court, and the California Supreme Court did not properly divide marital assets, award attorneys' fees and costs, and resolve custody/visitation issues, establish a jurisdictional basis for this Court to grant a writ of certiorari?

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OPINIONS BELOW

Appear in Appendix A to Petitioner's Petition for Writ of Certiorari, and in Appendix B to this brief.

JURISDICTION

As explained herein, this Court has

no jurisdiction to review this matter under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner Perry Seal claims herein that the decision of a California trial court in a marital dissolution proceeding, which was affirmed by the California Appellate and Supreme Courts, regarding the characterization and division of marital assets, the award of attorneys' fees and costs against Petitioner, and custody/visitation issues, rises to the level of federal jurisdiction under the 28 U.S.C. 1257(3).

Pursuant to California Family Code §2010, and predecessor statutes, the authority of California state courts to make factual and legal decisions regarding a marital dissolution of

California residents has long been upheld to be a valid and constitutional exercise of judicial authority.

In this matter, the division of the parties' marital assets, the award of attorneys' fees and costs against Petitioner, and the custody/visitation rulings, which are the basis for Petitioner's request for relief by this Court, were all affirmed by:

1. the decision of the California Supreme Court following a trial at which Petitioner appeared, testified and presented the testimony of witnesses;

2. the California Superior Court, on Petitioner's motion for a new trial;

3. the California Court of Appeal, by a decision attached as pages 32-69 of his Petition for Writ of Certiorari;

4. the California Court of Appeal, by decision denying Petitioner's

motion for reconsideration (attached hereto as Appendix B); and

5. the California Supreme Court, by decision attached as page 31 of Petitioner's Petition for Writ of Certiorari, which denied Petitioner's Petition for Review.

REASONS FOR DENYING THE WRIT

Petitioner erroneously claims that his Petition for Writ of Certiorari should be granted pursuant to 28 U.S.C. §1257(3). Firstly, section 1257(3) does not exist, as it was amended and stricken by Public Law 100-352, effective June 27, 1988.

Secondly, to the extent that Petitioner is presumably claiming jurisdiction under 28 U.S.C. §1257(a), the actions of the Superior, Appellate and Supreme Courts of California, in

dividing the parties' marital assets, awarding attorneys' fees and costs, and ruling on custody/visitation issues, were neither (a) repugnant to the United States Constitution, or (b) violative of Petitioner's due process and equal protection rights.

California's grant of jurisdiction to its Superior Courts to review and determine all proceedings for marital dissolution, support, division of property, and child custody/visitation is established by California Family Code §2010, a statute derived from former Civil Code §4351, which was originally enacted in 1970. Nothing therein is repugnant to the United States Constitution. To the contrary, such a statute is consistent with the well-established principle that "the whole subject of domestic relations of husband

and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." (In Re Burris, 136 U.S. 586, 593-594, 10 S.Ct. 850, 34 L.Ed 500 (1890); see, also, Ankenbrandt v. Richards (1992) 112 S.Ct. 2206, 2214-2215, 119 L.Ed.2d 468, 482-483.)

Petitioner's contentions that he was denied his due process and equal protection rights are equally erroneous. Petitioner was afforded a full and fair opportunity to be heard at the Superior Court trial proceedings, at which he was present and represented by counsel, and at four separate requests for review, all filed by Petitioner's attorney, which have been rejected by the California Superior, Appellate and Supreme Courts.

In addition, the fact that the California Trial Court found that

Petitioner did not satisfy his burden to establish evidence to support his positions in no way constitutes a constitutional denial of due process or equal protection rights. Rather, as this matter manifests, Petitioner's basis for his Petition for Writ of Certiorari is premised on nothing more than the fact that he is a disgruntled individual who refuses to accept the decisions of every California Court that has ruled against him.

Beneath the facade of Petitioner's attempt to argue that this matter involves a cognizable federal question is the basic fact that the issues presented by Petitioner involve simply factual questions regarding the actions and state of mind of the two parties herein. As Petitioner concedes, the thrust of his Petition for Writ of Certiorari is that

he disagrees with the trial court's finding, and the affirmance by both the California Appellate Court and the California Supreme Court, that Respondent (hereafter "Mrs. Seal") did not knowingly and voluntarily execute a quitclaim deed in 1978.

This issue has absolutely no relevance to any federal question or other basis for invoking this Court's jurisdiction. Rather, the issue is simply one of what factually transpired between these two adult spouses in a personal matter, and the credibility of the testimony of each of the parties on this matter. For this reason alone, the Petition for Writ of Certiorari should be denied.

If, however, for some reason, this Court were to look into the facts of this case, the following evidence introduced

at the Superior Court trial amply supports the ruling of the trial court, as affirmed by the California Appellate Court and California Supreme Court, that Mrs. Seal did not knowingly and voluntarily execute a quitclaim deed relinquishing her community property interest in the Hayward, California property:

1. Throughout the marriage, Petitioner would routinely ask Mrs. Seal to sign either blank documents or documents that she did not understand;

2. When Mrs. Seal asked Petitioner about the meaning of documents that he asked her to sign, Petitioner would refuse to explain them, by telling Mrs. Seal that because she only had a junior college education, and he was a Harvard MBA, she was not intelligent enough to understand the document;

3. After Mrs. Seal signed documents, she never saw them again and did not know what information was contained therein;

4. The only time Mrs. Seal could recall ever signing a document before a notary was when the parties opened an equity line of credit;

5. Mrs. Seal's understanding was that all property acquired during the marriage was community property;

6. At no time during the marriage did Mrs. Seal knowingly and voluntarily waive any claim that she had to a community interest in the Hayward property;

7. Petitioner never discussed the contents or meaning of the quitclaim deed with Mrs. Seal at the time that she executed the document;

8. The date of Mrs. Seal's

execution of the quitclaim deed differs from the date her signature was notarized;

9. The notary could not explain the discrepancy in these dates; and

10. The combination of Petitioner's history of insisting that Mrs. Seal sign documents in blank without explaining their contents, Petitioner's humiliation of Mrs. Seal when she would inquire about the contents and meaning of documents, Petitioner's total control of all financial matters, and Mrs. Seal's intent never to knowingly waive any community property, were sufficient to overcome any rebuttable presumption of title created solely by Mrs. Seal's signature on the document.

Furthermore, and of utmost importance, is the fact that since there was conflicting testimony regarding the

facts surrounding the quitclaim deed, the trial and appellate courts necessarily had to determine the credibility of each party in order to make its ruling on this issue.[1]

As the Court of Appeals stated: "The trial court had the parties before it and was able to assess their credibility."

On the issue of Petitioner's credibility, there was substantial and overwhelming evidence of his lack of veracity and credibility, both during the marriage, and in his trial testimony, based on the following:

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[1] For example, Petitioner testified that he "absolutely" discussed with Mrs. Seal the separate property nature of the purchase of the Hayward property. Mrs. Seal, on the other hand, denied that Petitioner ever discussed the quitclaim deed with her, that she was aware of its contents, or that she ever waived any community claim to the Hayward property.

1. Petitioner, a MBA from Harvard and a member of the California Bar, failed to file any business tax returns and financial statements with the IRS for 1982, 1983, 1984, 1985, 1986, 1987, 1988, and 1989. Petitioner never informed Mrs. Seal of this fact.

2. Petitioner claimed that tax returns and financial statements were prepared for 1982, 1983, 1984, and possibly 1985, but mysteriously, and for no plausible reason, they were never filed.

3. Petitioner's own accountant/ expert completely contradicted Petitioner's testimony, because in reviewing all of Petitioner's financial records, Petitioner's accountant/expert could not find a single one of these "prepared but unfiled" tax returns for 1982-1985.

4. Petitioner completely contradicted himself by testifying that he provided these non-existent tax returns to Mrs. Seal during discovery.

5. Petitioner's explanation of why no tax returns and financial statements were prepared for 1986, 1987, 1988, and 1989 was equally implausible and unbelievable. According to Petitioner, he didn't prepare these tax returns and financial statements because his bookkeeper was in an automobile accident. Although this bookkeeper was still able to function "intermittently," Petitioner kept waiting for four years for her to return to full capacity because "it was better to wait" than to take other appropriate action to file these tax returns on a timely basis.

6. On the parties' personal tax returns for 1985, 1986, and 1987,

Petitioner knowingly failed to report approximately $100,000 in rental income he received from the corporation. Petitioner never informed Mrs. Seal of this fact. Even though this information was available from the corporation's financial records, Petitioner claimed that he didn't include this income on the parties' tax returns because "he had no easy way of determining the amount of rent" paid to him. Petitioner's conduct triggered an audit which resulted in his hiring accountants and a tax attorney to prepare eight years of tax returns, and to advise him regarding his potential criminal liability.

7. As part of Petitioner's total management and control of his corporation, he routinely charged personal family expenses for the parties and their children to the corporation and

declared them for tax purposes as "business expenses." These expenses, including travel, first class lodging, dining, clothing, car, and recreation, were consistently funded through the corporation.

8. As part of his manipulation of the parties' financial affairs, Petitioner routinely engaged in the illegal practice of "kiting," whereby he would issue a check to the corporation from the parties' personal community account, knowing that there were insufficient funds to cover the check. Simultaneously, Petitioner would write a check from the corporation and deposit it into the community personal account. Petitioner justified this practice on the basis that it was a way to "handle a short term cash flow problem in the corporation." In fact, this "short term"

kiting continued throughout the marriage.

9. Petitioner attempted to introduce evidence of three promissory notes which he claimed showed money he owed to his parents, which he stated was used for business purposes. However, Petitioner's own expert/accountant admitted that the figures for these for these notes were not supported by any financial records of the corporation.

10. In February of 1990, the trial court ordered Petitioner to pay to Mrs. Seal one-half of the monthly rent he received from his corporation. Petitioner never paid this money to Mrs. Seal, claiming that after eight or nine years of receiving this rent from the corporation, the corporation could suddenly no longer afford to pay it. Petitioner's arbitrary decision to stop collecting rent was contemporaneous with

the separation of the parties and the filing of this dissolution proceeding in January of 1990. Petitioner denied that the timing of his decision not to comply with the trial court's order was anything other than coincidental.

11. As part of the same interim order which required Petitioner to pay Mrs. Seal one-half of the rent payments, Petitioner was also required to provide Mrs. Seal with monthly accountings of the corporate finances. Petitioner has refused to comply with this order, even though as President and Chief Executive Officer of the corporation, he clearly had the ability to do so.

12. Throughout the trial, Petitioner made numerous claims that various assets were his separate property. As the California Superior Court found, Petitioner did not produce

any documentary evidence in the form of contemporaneous bank statements, receipts, cancelled checks, or correspondence to support these claims. Moreover, this was not a case where such documentation was unavailable to Petitioner. To the contrary, since Petitioner personally and solely managed, controlled, and dictated all of the corporation's financial affairs, as well as the personal financial affairs of the parties, he was the one person who had access to whatever information he claims existed to support his separate property claims.

13. The trial court found that "there is considerable evidence before the court that H (Petitioner herein) has, by stalling and failing to cooperate with respect to the property issues in this case, and by his negligent handling and

intermixing of the community's funds with those of his own, substantially increased W's (Respondent herein) attorneys' fees and accountant's fees....H clearly emerges as the primary 'frustrator'" of settlement. (Material in parentheses added.)

CONCLUSION

Based on the foregoing, and contrary to Petitioner's position, the decisions of the California Superior, Appellate and Supreme Courts did not violate his Fifth and Fourteenth Amendment rights by dividing the parties' marital assets in accordance with California law, awarding Mrs. Seal attorney's fees and costs against Petitioner based on his intransigent, obstructionist and bad faith conduct, or ruling on the custody/visitation issues. Similarly,

these courts did not base their decisions on a standard of who was the "greatest perceived victim," or deny Petitioner his legal rights by perpetrating some cognizable wrong "against our social and economic institutions."

Equally important, none of these issues, which all involve factual determinations by a California trial court relating to the parties' marriage, rise to the level of any federal question upon which the jurisdiction of this Court may be invoked by Petitioner.

The Petition for Writ of Certiorari should be denied.

Dated: August 20, 1994

Respectfully submitted,

STEPHEN F. WHITMORE
Attorney for Respondent
KATHLEEN F. SEAL

APPENDIX B

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION FOUR

FILED
MAR 2 - 1994
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By _____ Deputy

KATHLEEN SEAL
vs.
PERRY SEAL, JR.
IN RE THE MARRIAGE OF SEAL
A058507
SAN MATEO CO. NO. 347633

BY THE COURT:

By letter appellant, Perry Seal, has made what we construe to be a motion for reconsideration of our denial of his petition for rehearing. That motion is denied as is his accompanying request for judicial notice.

Dated: MAR 2 - 1994

POCHE [illegible] P.J.

_____ P.J.